

EXHIBIT F

**Mast Mar. 2, 2024 *Touhy*
Letter**

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March 2, 2024

BY EMAIL

Kathryn L. Wyer
U.S. Department of Justice
Civil Division, Federal Programs Branch
1100 L St, NW, Room 12014
Washington, D.C. 20005
kathryn.wyer@usdoj.gov

Re: Baby Doe et al. v. Joshua Mast et al., Case No. 3:22-cv-49-NKM

Dear Ms. Wyer:

We have reviewed your letter from February 23, 2024 and provide this response.

As an initial matter, we used multiple folders in a good faith attempt to segregate and identify which agencies may have equities in the requested documents, as was our understanding from your prior letter was that we needed to provide multiple folders so each agency could examine the documents in which they could possibly have a stake. The reason some documents with the same bates number appear in multiple agency folders is that we had identified multiple agencies that may have an interest in the same document.

1. The Masts agree that documents originally produced to Plaintiffs, bearing a DOD bates number in the form DOD-XXXXX need not be processed for *Touhy* approval as the Masts need not re-produce documents originating with Plaintiffs. The inclusion of any such documents was likely unintentional and the result of a compressed timeframe for discovery response. Please confirm that the only such documents you propose to take out of the *Touhy* request are those bearing the bates form "DOD-XXXXX," as the Masts will have to make sure they are accounting for documents appropriately. As for your proposal that the parties not use the "State *Touhy* Documents" in this federal litigation, we suggest additional conferral with all parties, since our understanding is that the Plaintiffs have *already* produced these documents in this case, to multiple parties, and thus the *Touhy* process may no longer apply. In any event, the Masts are not in a position to speak for other parties about documents that have already been produced and used in the federal litigation.

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2. The Masts agree to identify documents containing employees' and ex-employees' names and contact information as confidential under the protective order. We will oblige to your request to include your February 23, 2024 letter with all productions of *Touhy*-approved documents, which will be labeled as confidential. Please note, however, if required to depose any of the individuals whose names appear in these documents or anyone else in this case with relevant information, it may be reasonably necessary for the Masts' defense to disclosure the names of individuals who touched any aspect of the adoption or transfer of the Child in Afghanistan, as permitted under the current protective order in this case. *See* ECF No. 224(f).
3. We will seek Plaintiffs agreement not to produce material the United States has filed in the state court proceedings. If they agree that the material need not be produced, then we can withdraw the request for that class of material. We express no views at this time about the applicability of state court sealing orders over this material.
4. You are correct that any materials with the actual names of John and Jane Doe and the Masts' daughter will be designated as confidential under the protective order.
5. We understand your position about not identifying as confidential information about the Masts, Ms. Motley, and Mr. Osmani.

Please let us know whether you have any more questions or would like to discuss sometime next week.

Respectfully submitted,

/s/ Michael L. Francisco

John S. Moran

Michael L. Francisco (*pro hac vice*)

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